

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CESAR MATEO

Plaintiff,

-v.-

Civil Action No.
9:10-cv-1103 (GLS/TWD)

M. GUNDRUM, MARTIN,
DANIEL MARTUSCELLO

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

CESAR MATEO
01-A-4789
Plaintiff, *pro se*
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562

FOR THE DEFENDANTS:

HON. ERIC T. SCHNEIDERMAN
Attorney General for the
State of New York
The Capitol
Albany, New York 12224

JAMES SEAMAN, ESQ.

GARY L. SHARPE,
CHIEF JUDGE

ORDER

The above-captioned matter comes to this court following a Report-
Recommendation by Magistrate Judge Therese Wiley Dancks, duly filed

April 30, 2012. Following ten days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Magistrate Judge's Report-Recommendation for clear error, it is hereby

ORDERED, that the Report-Recommendation of Magistrate Judge Therese Wiley Dancks filed April 30, 2012 is ACCEPTED in its entirety for the reasons state therein, and it is further

ORDERED that the amended complaint (Dkt. No. 39) is accepted for filing as the operative pleading in this action; and it is further

ORDERED that the Clerk is directed to terminate Defendant Martuscello from this action without leave to amend; and it is further

ORDERED that Defendants Gundrum and Martin be directed to answer Plaintiff's retaliation claims within two weeks of this Order adopting the Report-Recommendation; and it is further

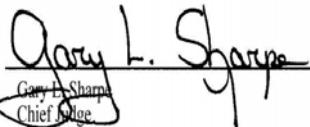
ORDERED that the Court dismisses the Eighth Amendment claims against Defendants Gundrum and Martin, the conspiracy claims, and the due process claims without leave to amend; and it is further

ORDERED that upon receipt from Plaintiff of the documents required for service, the Clerk shall issue summonses and forward them, along with copies of the second amended complaint (Dkt. No. 39), to the United States

Marshal for service upon Defendant Mohammed Khair; and it is further ORDERED, that the Clerk of the Court is to serve a copy of this order upon the parties in accordance with the court's local rules.

IT IS SO ORDERED

Dated: May 23, 2012
Albany, New York


Gary L. Sharpe
Chief Judge
U.S. District Court